

Talking Points on Real ID Act Issue Impacting Freely Associated States and The REAL ID Act Modification for Freely Associated States Act (H.R. 3398)

Background on the Compact of Free Association

Since 1986, the United States has had parallel international agreements with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) called the "Compact of Free Association" (COFA). The approval of COFA terminated the U.S. trusteeship over the former Trust Territory of the Pacific Islands (TTPI), established FSM and RMI as independent nations, and established a special relationship between the U.S. and these nations (also referred to as the Freely Associated States (FAS)). Under the terms of the Compact agreement:

- FAS citizens (who are otherwise eligible) are admitted into the U.S. without visa to study, work and reside in the U.S. and its territories.
- FAS citizens are issued appropriate documentation upon entry, however, these forms (I-94s) are marked with the traveler's citizenship but do not indicate a date when their status ends, as they are currently granted an unlimited length of stay. This is because their status is indefinite as the result of the agreements their governments have reached with the U.S.

Problem: *Omission of FAS in the Real ID Act of 2005*

- In May 2005, President Bush signed into law the Real ID Act of 2005, which establishes minimum security standards for state-issued driver's licenses and identification cards. Since the passage of the law, some states have been granted waivers allowing additional time to meet implementation deadlines and to become fully compliant with the various requirements under the law.
- The Act was enacted as part of the 9/11 Commission's recommendations that the Federal government set standards for the issuance of sources of identification.
- Under the statute, there is an omission of FAS under definitions section, which fails to recognize FAS citizens' special non-immigration status in the U.S.. Due to this oversight, FAS citizens have been placed in the category of "all non-immigrants" and as a result issued limited term drivers licenses/non-drivers licenses.

Impact: *What are the key issues and who is affected?*

- Since the passage of the Real ID Act, the U.S. government has interpreted and applied provisions of the Act (Title II, Section 201(c)), which imposes one-year limitation only on indefinite-stay entrants) as permitting only temporary drivers licenses and identification cards valid for no more than one year to FAS citizens seeking to obtain drivers licenses.
- Under the law, "temporary" or "limited term" licenses must be renewed in person to provide evidence that their temporary lawful status is still in effect.
- This limitation creates serious disruption and hardship for FAS citizens throughout the U.S. who seek to pursue their Compact rights to work and reside in the country.
- The issue also adds unnecessary costs and administrative time on states and local authorities to annually renew and process identification cards/drivers licenses.

Error! Unknown document property name.

Arnold & Porter represents the Federated States of Micronesia and is registered as an agent of the Federated States of Micronesia under the Foreign Agents Registration Act, 22 U.S.C. § 611 et seq. Arnold & Porter is distributing this document on behalf of the Federated States of Micronesia. Additional information is on file with the U.S. Department of Justice.

- Given the unique immigration privileges of FAS citizens, there has been confusion and inconsistent interpretations amongst individual state and local authorities, which reserve the right to determine which forms of identification are acceptable for various privileges, including access to drivers licenses.
- While the Department of Homeland Security and Department of State have previously issued guidance to provide information to state motor vehicle authorities regarding FAS citizens status, it is clear that a permanent statutory solution is necessary to provide clarity and certainty under the law.

Solution: *Support the REAL ID Act Modification for Freely Associated States Act (H.R. 3398)*

- Based on clear reading of the law, there was Congressional intent to include FAS citizens, as the statute defines (though incorrectly) under the definition of “state”, the Trust Territory of the Pacific Islands, which had not been in existence for nearly a decade when the Real ID Act of 2005 was passed.
- H.R. 3398 would make a small technical correction to the Real ID Act of 2005 by adding provision clarifying the status of FAS citizens.
- This legislation will provide a statutory fix to this problem after nearly a decade of efforts between FAS embassies working with federal agencies and state level authorities to mitigate this issue.
- By supporting HR 3398, it will relieve unnecessary administrative burdens, not just FAS citizens residing in the U.S. but also their employers and state agencies, and allow resources and time to be redirected toward other critical priorities.

Error! Unknown document property name.

Arnold & Porter represents the Federated States of Micronesia and is registered as an agent of the Federated States of Micronesia under the Foreign Agents Registration Act, 22 U.S.C. § 611 et seq. Arnold & Porter is distributing this document on behalf of the Federated States of Micronesia. Additional information is on file with the U.S. Department of Justice.